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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Rebecca Sandoval,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-22-08017-PCT-MTL

**ORDER**

15 At issue is the denial of Plaintiff Rebecca Sandoval’s Applications for Supplemental  
16 Security Income (“SSI”) and Disability Insurance Benefits (“DIB”) by the Social Security  
17 Administration (“SSA”) under the Social Security Act (“the Act”).<sup>1</sup> Plaintiff filed a  
18 Complaint (Doc. 1) with this Court seeking judicial review of that denial, and the Court  
19 now addresses Plaintiff’s Opening Brief (Doc. 14), Defendant Social Security  
20 Administration Commissioner’s Response Brief (Doc. 18), and Plaintiff’s Reply Brief  
21 (Doc. 19). The Court has reviewed the briefs, Administrative Record (Doc. 13, “R.”), and  
22 the Administrative Law Judge’s (“ALJ”) decision (R. at 1048-63) and hereby reverses the  
23 ALJ’s decision and remands this matter to the SSA Commissioner for a new administrative  
24 hearing for the reasons addressed herein.

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27 <sup>1</sup> The relevant DIB and SSI regulations in this case are virtually identical, and the Court  
28 cites only the DIB regulations in the Order. Parallel SSI regulations are found in 20 C.F.R.  
§§ 416.900-416.999 and correspond with the last two digits of the DIB citation (e.g., 20  
C.F.R. § 404.1520 corresponds with 20 C.F.R. § 416.920).

## I. BACKGROUND

Plaintiff filed applications for DIB and SSI on July 30, 2013, for a period of disability beginning on March 11, 2013. (Doc. 14 at 1.) Prior to the present appeal, an ALJ issued an unfavorable decision on October 26, 2016, and an amended decision on November 30, 2016. (Doc. 13-3 at 11.) The Appeal Council reviewed and upheld the ALJ's decision on February 12, 2019. (*Id.* at 14.) On appeal, this Court reversed and remanded the case for further proceedings. (Doc. 13-14 at 5.) After a new hearing, an ALJ again issued an unfavorable decision on January 21, 2022. (*Id.* at 20.) On February 2, 2022, Plaintiff filed this action seeking judicial review. (Doc. 1.)

Upon consideration of the medical records and opinions, the ALJ evaluated Plaintiff's alleged disability based on the severe impairments of cervical degenerative disc disease, lumbar degenerative disc disease, degenerative joint disease of the bilateral hips and bilateral shoulder impingement syndrome/adhesive capsulitis/tendinitis. (R. at 1051.) Ultimately, the ALJ concluded that Plaintiff was not disabled. (R. at 1063.) The ALJ found that Plaintiff did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 1053.) The ALJ determined that Plaintiff had the residual functional capacity ("RFC") to perform light work as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b) with certain functional limitations and concluded that Plaintiff can perform her past relevant work as a vault cashier. (R. at 1054, 1062.)

## II. LEGAL STANDARD

In determining whether to reverse an ALJ's decision, the district court reviews only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The Court may set aside the Commissioner's disability determination only if the determination is not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, but less than a preponderance; it is relevant evidence that a reasonable person might accept as adequate to support a conclusion considering the record as a whole. *Id.* To determine whether substantial evidence supports a decision, the court must consider

1 the entire record and may not affirm simply by isolating a “specific quantum of supporting  
 2 evidence.” *Id.* Generally, “[w]here the evidence is susceptible to more than one rational  
 3 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be  
 4 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

5 To determine whether a claimant is disabled for purposes of the Act, the ALJ  
 6 follows a five-step process. 20 C.F.R. § 416.920(a). The claimant bears the burden of proof  
 7 on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett v.*  
 8 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether  
 9 the claimant is presently engaging in substantial gainful activity. 20 C.F.R. § 416.920(b).  
 10 If so, the claimant is not disabled, and the inquiry ends. *Id.* At step two, the ALJ determines  
 11 whether the claimant has a “severe” medically determinable physical or mental  
 12 impairment. *Id.* § 416.920(c). If not, the claimant is not disabled, and the inquiry ends. *Id.*  
 13 At step three, the ALJ considers whether the claimant’s impairment or combination of  
 14 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P  
 15 of 20 C.F.R. Part 404. *Id.* § 416.920(d). If so, the claimant is automatically found to be  
 16 disabled. *Id.* If not, the ALJ proceeds to step four. *Id.* At step four, the ALJ assesses the  
 17 claimant’s RFC and determines whether the claimant is still capable of performing past  
 18 relevant work. *Id.* § 416.920(e). If so, the claimant is not disabled, and the inquiry ends. *Id.*  
 19 If not, the ALJ proceeds to the fifth and final step, where they determine whether the  
 20 claimant can perform any other work in the national economy based on the claimant’s RFC,  
 21 age, education, and work experience. *Id.* § 416.920(g). If so, the claimant is not disabled.  
 22 *Id.* If not, the claimant is disabled. *Id.*

### 23 **III. ANALYSIS**

24 Plaintiff argues that the ALJ failed to properly consider the opinion of Plaintiff’s  
 25 treating physician, Dimitri D. Adarmes, M.D. (Doc. 14 at 1.) Within that argument,  
 26 Plaintiff also argues that the ALJ erred in assessing Plaintiff’s substantial gainful activity  
 27 at step one of the analysis. Plaintiff requests this Court to remand the case for an award of  
 28 benefits. (Doc. 14 at 1.)

1           **A. Substantial Gainful Activity**

2           Plaintiff contends that the ALJ erroneously determined that she performed  
3 substantial gainful activity after her alleged onset date at step one without conducting the  
4 required analysis for her 2015 self-employment income under SSR 83-34. (Doc. 14 at 16.)  
5 The ALJ found that Plaintiff engaged in substantial gainful activity from March 11, 2013,  
6 through December 31, 2015, because Plaintiff's total earnings for 2014 and 2015 exceeded  
7 the threshold for earnings presumed to represent substantial gainful activity. Specifically,  
8 the ALJ found that Plaintiff received income of \$13,921.44 in 2015. (R. at 1051, 1368-70.)

9           Substantial gainful activity is work activity that is both "substantial," involving  
10 "significant physical or mental activities," and "gainful," done "for pay or profit." 20  
11 C.F.R. § 404.1572. A claimant has the burden to prove she has not engaged in substantial  
12 gainful activity "for a continuous period of not less than 12 months" from her alleged  
13 disability onset date. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1194-95 (9th  
14 Cir. 2004) (citing 42 U.S.C. § 423(d)(1)(A)). If a claimant has engaged in substantial  
15 gainful activity since filing for benefits, then the claimant cannot be found to be disabled  
16 regardless of her medical condition. 20 C.F.R. §§ 404.1520(b), 416.920(b). The existence  
17 of earnings over the statutory minimum creates a presumption of substantial gainful  
18 employment. *Id.* §§ 404.1574(b)(2), 404.1575(b)(2); *Keyes v. Sullivan*, 894 F.2d 1053,  
19 1056 (9th Cir. 1990). But the presumption may be rebutted if a claimant demonstrates an  
20 "inability to be self-employed or to perform the job well, without special assistance, or for  
21 only brief periods of time." *Id.* Substantial gainful activity monthly income thresholds were  
22 \$1,070.00 in 2014 and \$1,090.00 in 2015. (R. at 32); *see* Social Security Administration,  
23 *Substantial Gainful Activity*, <https://www.ssa.gov/oact/cola/sga.html> (last visited Aug. 4,  
24 2023).

25           Plaintiff does not dispute that she earned a total of \$13,921.44 in 2015, which would  
26 amount to a total monthly income was \$1,160.12.<sup>2</sup> (Doc. 14 at 16.) Plaintiff instead argues  
27 that the ALJ failed to subtract the value of her daughter's unpaid help to determine her

28           <sup>2</sup> The Court calculated this amount by dividing Plaintiff's annual income, \$13,921.44 by  
12 to arrive at an average monthly income. *See* 20 C.F.R. § 404.1575.

1 countable income and make the required findings to establish that her self-employment is  
2 substantial gainful activity, as required by 20 C.F.R. § 404.1575. (*Id.* at 16-17.) Plaintiff  
3 further argues that the ALJ erroneously required her to produce old tax returns without  
4 considering her testimonial evidence. (*Id.*)

5 Plaintiff testified that her 2015 self-employment income was earned from buying  
6 and selling items on eBay with her daughter. (R. at 1086.) Plaintiff stated that she worked  
7 approximately five hours each week and her duties involved reading emails and checking  
8 the internet for items to buy or sell. (R. at 60, 1088.) Plaintiff further testified that her  
9 daughter would list the items for sale and then package and mail the items when sold. (*Id.*)  
10 Plaintiff indicated that her daughter did most of the work. (R. at 1111.) During the hearing,  
11 the ALJ requested Plaintiff submit her tax returns for 2014 and 2015. (R. at 1051, 1100.)  
12 Plaintiff testified that she was unsure if she had those tax returns in her possession, and  
13 Plaintiff avers that record requests for the IRS only allow for transcripts from the three  
14 prior processing years, so she could not provide them to the ALJ. (Doc. 14 at 17; R. at  
15 1101-02, 1409.) Plaintiff had over two months to submit the tax returns, and because she  
16 failed to do so, the ALJ summarily considered her earnings to be substantial income  
17 exceeding the threshold for substantial gainful activity from March 11, 2013, through  
18 December 31, 2015. (R. at 1051.)

19 The Court agrees that the ALJ failed to conduct the required analysis at step one.  
20 The ALJ relied solely on Plaintiff's income to find that she had substantial gainful activity.  
21 (Doc. 13-14 at 8.) Section 404.1575(a)(2) specifically states, however, that "[w]e will not  
22 consider your income alone because the amount of income you actually receive may  
23 depend on a number of different factors. . . ." The regulations require the ALJ to analyze a  
24 claimant's self-employment activities under a series of three tests to determine if they count  
25 as substantial gainful activity. 20 C.F.R. § 404.1575. The ALJ failed to analyze any of  
26 those three tests in their decision.

27 On this record it is unclear whether Plaintiff's countable earnings met the income  
28 level set by the SSA, but the ALJ nonetheless concluded Plaintiff's self-employment was  
substantial gainful activity. (Doc. 13-14 at 8.) There is no indication that the ALJ performed

any of the required analyses to determine Plaintiff's countable monthly income under the regulations. Nor is there any reasoning in the decision that, despite Plaintiff's daughter's contributions to her business, any other factors supported a finding that Plaintiff engaged in substantial gainful activity. Notably, the Commissioner concedes that, "the ALJ did not perform a detailed analysis of Plaintiff's self-employment." (Doc. 18 at 4). Under the relevant regulations, the ALJ should have made inquiries into the amount of help provided by Plaintiff's daughter. The ALJ also had some responsibility to inquire about any incurred business expenses that might offset Plaintiff's monthly income where Plaintiff indicated that the tax returns may be irretrievably lost.<sup>3</sup> See *Montoya v. Colvin*, 649 Fed. App'x 429, 431 (9th Cir. 2016) (finding an ALJ erred by not "addressing the substantial gainful activity issue or developing the record on it" when the record was unclear whether a plaintiff earned more than the level set by the agency). Because the ALJ did not "set forth the reasoning behind [their] decision in a way that allows for meaningful review," the Court cannot affirm the decision. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015). Thus, the Court remands this matter for a proper determination of Plaintiff's substantial gainful activity from March 11, 2013, to December 31, 2015.

#### **B. Medical Opinion Evidence**

Plaintiff argues that the ALJ improperly rejected the opinions of her treating physician Dr. Adames. (Doc. 14 at 17.) When evaluating medical opinion evidence in cases filed prior to March 27, 2017, "[t]he ALJ must consider all medical opinion evidence," and there is a hierarchy among the sources of medical opinions. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Those who have treated a claimant are treating physicians, those who examined but did not treat the claimant are examining physicians, and those who neither

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<sup>3</sup> Moreover, the ALJ cited Plaintiff's failure to submit her requested tax returns as a primary reason for finding her earnings qualified as substantial gainful activity. (R. at 1051.) However, nowhere in the regulations are a claimant's state tax returns required for an ALJ can issue a favorable finding. The Commissioner notes that, "[t]ax returns are a relevant consideration in evaluating [substantial gainful employment] under 20 C.F.R. § 404.1575." (Doc. 18 at 4.) While income tax returns may be relevant to the analysis, nothing under Section 404.1575 or SSR 83-34 requires them. The ALJ's sole reliance on the missing income tax returns was misplaced where Plaintiff provided relevant testimony regarding her daughter's unpaid services that the ALJ failed to consider.



1 examined nor treated the claimant are non-examining physicians. *Lester v. Chater*, 81 F.3d  
2 821, 830 (9th Cir. 1995). Although greater weight is generally afforded to treating  
3 physicians, a “treating physician’s opinion is not, however, necessarily conclusive as to  
4 either a physical condition or the ultimate issue of disability.” *Rodriguez v. Bowen*, 876  
5 F.2d 759, 761–62 & n.7 (9th Cir. 1989). If a treating physician’s opinion is not given  
6 controlling weight, then the ALJ must consider the relevant factors listed in 20 C.F.R.  
7 § 404.1527(d)(2)-(6) to determine the appropriate weight to give the opinion. *Orn*, 495  
8 F.3d at 632. “The ALJ need not accept the opinion of any physician, including a treating  
9 physician, if that opinion is brief, conclusory, and inadequately supported by clinical  
10 findings.” *Thomas*, 278 F.3d at 957. If a treating physician’s opinion is contradicted by  
11 another doctor’s opinion, the ALJ cannot reject the treating physician’s opinion unless he  
12 provides specific and legitimate reasons that are based on substantial evidence in the  
13 record.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “The ALJ can meet this  
14 burden by setting out a detailed and thorough summary of the facts and conflicting clinical  
15 evidence, stating his interpretation thereof, and making findings.” *Magallanes v. Bowen*,  
16 881 F.2d 747, 751 (9th Cir. 1989).

17 The ALJ rejected Dr. Adarmes’s opinion in part because the opinion is dated  
18 October 30, 2015 and it is “not consistent with the claimant’s ability to work at the level  
19 of substantial gainful activity through December 31, 2015.” (Doc. 13-14 at 18.) As the  
20 Court addressed above, the ALJ’s determination as to Plaintiff’s substantial gainful activity  
21 was erroneous. Thus, the ALJ’s rejection of Dr. Adarmes’s opinion on this basis cannot be  
22 a specific and legitimate reason supported by substantial evidence.

23 The ALJ provided one additional sentence to support the decision to give Dr.  
24 Adarmes’s opinion less weight: “the rather extreme exertional restrictions opined by Dr.  
25 Adarmes is [sic] not consistent with the medical evidence of record from January 2016  
26 forward, which indicates no more than mild to moderate remarkable findings. . . .” (R. at  
27 1061.) The Court finds that the ALJ’s discussion “does not explain—specifically and  
28 legitimately or otherwise—how [that evidence] leads to the conclusion that [Dr.  
Adarmes’s] evaluation should be disregarded.” *Widmark v. Barnhart*, 454 F.3d 1063, 1067

1 (9th Cir. 2006). Therefore, the Court finds that substantial evidence does not support the  
2 ALJ's conclusion to reject Dr. Adarmes's medical opinion.

3 **C. Credit-as-True**

4 Plaintiff asks the Court to use its discretion and remand this case for an immediate  
5 award of disability benefits rather than for further proceedings. (Doc. 14 at 21-24.) The  
6 credit-as-true doctrine only applies in "rare circumstances" that permit the Court to depart  
7 from the ordinary remand rule. *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090,  
8 1099-1102 (9th Cir. 2014). Three elements must be present for these rare circumstances to  
9 exist. First, the ALJ must have neglected to supply legally sufficient reasons for rejecting  
10 medical evidence. *Id.* at 1100. Second, a fully developed record must exist with no  
11 outstanding issues pending resolution before a disability determination can be made, and  
12 the Court must find that further administrative proceedings would not be constructive. *Id.*  
13 at 1101. Further proceedings are required when there are ambiguities and conflicts in the  
14 record that must be resolved. *Id.* Third, if the first two elements are met, the Court may  
15 "find[] the relevant testimony credible as a matter of law. . . and then determine whether  
16 the record, taken as a whole, leaves 'not the slightest uncertainty as to the outcome of [the]  
17 proceeding.'" *Id.* (citations omitted).

18 The Court finds the ordinary remand rule applies here. The ALJ must resolve the  
19 ambiguities in the record regarding whether Plaintiff's self-employment in 2015 constitutes  
20 substantial gainful activity from the alleged onset date and whether Dr. Adarmes's opinion  
21 is consistent with the record evidence as a whole. Accordingly, the Court remands this case  
22 to the Commissioner for further development of the record.

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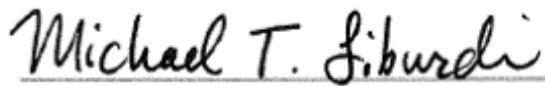
1 **IV. CONCLUSION**

2 Accordingly,

3 **IT IS ORDERED** that the decision of the Commissioner is **REVERSED**, and this  
4 case is **REMANDED** for further administrative proceedings consistent with this Order.

5 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to enter final  
6 judgment consistent with this Order and close this case.

7 Dated this 4th day of August, 2023.

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10 Michael T. Liburdi  
11 Michael T. Liburdi  
12 United States District Judge  
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